

RICARDO ANAYA)	
Claimant)	
)	
VS.)	Docket No. 1,032,183
)	
CARGILL MEAT SOLUTIONS)	
CORPORATION)	
Self-Insured Respondent)	

Claimant contends the ALJ erred in giving the independent medical examination (IME) report of Dr. Terrence Pratt more credibility than the report and testimony of Dr. C. Reiff Brown. Claimant argues that an IME report should not be given more credibility just because it is court ordered. Claimant further asserts that a review of the medical evidence

demonstrates that Dr. Brown's opinion is the only one that accurately reflects claimant's condition and follows the *AMA Guides*.¹

Respondent asks the Board to affirm the ALJ's Award, which found that Dr. Pratt's report was more credible and persuasive than that of Dr. Brown.

The issue for the Board's review is: What is the nature and extent of claimant's disability?

FINDINGS OF FACT

Claimant has worked for respondent about 10 years. On November 19, 2004, claimant injured his right knee while trying to place a printer next to a conveyor. He testified that the conveyor started to move and he lost his balance and began to fall backwards. He did not fall all the way down, but he twisted his right knee. He was seen by Dr. Neel, who performed surgery on his right knee on May 6, 2005. Dr. Shah performed a second surgery on claimant's right knee on October 19, 2006. Claimant continued to work during this period of time.

Claimant still has problems with his right knee. It bothers him going up and down stairs and sometimes on a level surface. The pain he experiences is in the same location he had pain before his two surgeries. It is on the inside of his knee and sometimes runs upward toward his thigh. At times it seems to go all the way around his knee. If he increases his physical activity, it tends to increase his difficulties. Claimant said he is now unable to run or do a lot of things he was able to do before.

Dr. C. Reiff Brown, a retired orthopedic surgeon, performed an evaluation of claimant on March 5, 2009, at the request of claimant's attorney. The examination centered around claimant's right knee and back.²

Dr. Brown said that on May 6, 2005, Dr. Neel did a debridement of claimant's medial meniscus, the result of a crush type injury of the back of the meniscus. Dr. Neel also resected some of the fatty ligamentous tissue under the kneecap. A second procedure was performed by Dr. Shah on October 18, 2006, a repair of another tear of the back of the medial meniscus and a chondroplasty of the patella and femoral condyle.

Upon examination, Dr. Brown found claimant had mild joint effusion which he believed was caused by synovitis. Dr. Brown said this could be the cause of claimant's

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

² Claimant has another workers compensation claim, Docket No. 1,032,302, that involves injuries to his low back allegedly incurred in a work-related injury while working for respondent on August 16, 2006.

continuing complaints of knee pain. Dr. Brown also found claimant had crepitus in his right knee on active movement, which could also be a source of claimant's complaints of right knee pain. Claimant's right knee lacked ten degrees of straightening out completely, and he had medial joint line tenderness extending upward to the medial aspect of the patella. Claimant's right thigh was one centimeter less than the left, which Dr. Brown said was a sign of atrophy of the quadriceps. Dr. Brown attributed the quadriceps atrophy to claimant's right knee injury.

Dr. Brown gave claimant restrictions due to his right knee injury of permanently avoiding work that involved squatting on the right leg, kneeling, and crawling. Claimant should avoid frequent long walks and frequent use of stairs and ladders. Based on the *AMA Guides*, for the right lower extremity Dr. Brown rated claimant as having a 10 percent impairment for loss of range of motion of flexion, an additional 10 percent impairment for a flexion contracture, a 5 percent impairment for crepitus, and a 2 percent impairment for the meniscectomy. This combined to a 25 percent impairment to the right lower extremity.

Claimant was examined by Dr. Terrence Pratt on May 30, 2008, by order of the ALJ. He was seen in conjunction with both his right knee injury and his back injury. In regard to his knee injury, claimant related that he twisted his right knee while he was installing a printer. He developed swelling within two hours. He was subsequently seen by Dr. Neel and then Dr. Shah for treatment that included two surgeries.

Claimant complained of discomfort in his right knee when he stood up fast or twisted the knee. He described a sensation like pins and needles primarily medially inside the knee and at times going to the calf and thigh. He said he had occasional popping and catching of the knee without giveaway. He had palliation when he utilized soft soled shoes. His condition was exacerbated with prolonged walking and stairs.

In his examination, Dr. Pratt found no significant edema, erythema or temperature asymmetry. Palpable tenderness at the knee level was not found. Claimant had decreased circumference of his left calf and thigh, but Dr. Pratt could not totally explain the reason for the decrease in the calf circumference on the left other than it could be related to his low back symptoms. Dr. Pratt found that claimant had significant patellofemoral crepitus on the right and to a lesser degree on the left. He found no significant findings with meniscus, drawer testing or significant medial or lateral laxity. Patrick's testing on the right revealed knee symptoms and mild low back involvement, but on the left he was negative. Claimant's gait was within normal limits. "Active movements of the knees revealed the ability to extend to 0 degrees bilaterally, flexion 100 degrees on the right and 133 degrees on the left."³ Dr. Pratt noted: "In relationship to the right knee involvement, today, he had limitations in active

³ IME report of Dr. Pratt filed June 9, 2008, at 3.

movement to 100 degrees for flexion of the knee, but in the past, he was noted to have full active movement."⁴

Dr. Pratt diagnosed claimant with right knee discomfort with a history of medial meniscal tear status post debridement and chondroplasty. He was unaware of any additional medical care that would result in resolution of claimant's right knee symptoms. He opined that claimant should avoid activities that require unlevel surfaces and kneeling and crawling. Claimant should do no frequent bending or twisting, and should limit maximal lifting to 30 pounds occasionally and 20 pounds more frequently.⁵

For claimant's partial meniscectomy, Dr. Pratt rated him as having a 2 percent impairment of the right lower extremity. For loss of range of motion, Dr. Pratt rated claimant as having a 10 percent impairment. These ratings combine for a total 12 percent permanent partial impairment to claimant's right lower extremity, based on the *AMA Guides*.

PRINCIPLES OF LAW

K.S.A. 2008 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2008 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 44-510e states in part:

If the employer and the employee are unable to agree upon the employee's functional impairment and if at least two medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, such matter may be referred by the administrative law judge to an independent health care provider who shall be selected by the administrative law judge from a list of health care providers maintained by the director. The health care provider selected by the director pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination.

K.S.A. 44-516 states:

⁴ *Id.* at 5.

⁵ Dr. Pratt set out his recommendations for restrictions without relating them to either the right knee or low back injury.

In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct. The report of any such health care provider shall be considered by the administrative law judge in making the final determination.

K.S.A. 44-510d(a) states in part:

Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i and amendments thereto, but shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total loss of use and as provided in the following schedule, 66 2/3% of the average gross weekly wages to be computed as provided in K.S.A. 44-511 and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c and amendments thereto. If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

....

(16) For the loss of a leg, 200 weeks.

....

(23) Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

ANALYSIS

The record contains impairment ratings from two physicians, Dr. Pratt and Dr. Brown. Both are orthopedic surgeons. Dr. Pratt examined claimant pursuant to court order. His selection was agreed to by the parties. Dr. Pratt was asked to determine what, if any, additional medical treatment claimant required and, if he was at maximum medical improvement, to provide permanent restrictions and a permanent impairment rating. Dr. Brown was selected by claimant's counsel to provide a rating.

The rating opinions of Dr. Pratt and Dr. Brown are remarkably similar with respect to the percentages given for the partial meniscectomy and loss of range of motion. Where the doctors disagree is that Dr. Brown gave claimant an additional 10 percent for flexion contracture and 5 percent for crepitus. Whereas Dr. Brown only found crepitus in claimant's right knee, Dr. Pratt found it in both the left and the right. Presumably, the presence of crepitus in the uninjured left knee led Dr. Pratt to conclude that its presence

in the right knee was not as a consequence of the work injury. A reading of Dr. Pratt's report explains the absence of a rating for flexion contracture in that it was not present when he examined claimant. Claimant had the ability to extend to 0 degrees bilaterally. Dr. Pratt found that claimant's flexion was 100 degrees on the right and 133 degrees on the left, but Dr. Pratt noted that claimant had been described as having full active movement in the past. Dr. Brown found flexion to 108 degrees in the right knee, which is a little better than the 100 degrees found by Dr. Pratt. However, Dr. Brown found a 10 degree flexion contracture as compared to Dr. Pratt's finding that claimant had the ability to extend to 0 degrees. The two doctors also had different findings concerning the circumference of claimant's thighs and which leg was smaller.

In this instance, the Board finds the opinions of Dr. Pratt more persuasive.

CONCLUSION

Claimant has a 12 percent permanent impairment of function at the level of the leg.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Pamela J. Fuller dated October 22, 2009, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
D. Shane Bangerter, Attorney for Self-Insured Respondent
Pamela J. Fuller, Administrative Law Judge